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by such person, it appears that the accounts, or any books or records pertaining to or in support thereof, are not being kept and maintained as required by the Commission, or that the statements or reports prepared and submitted are not in proper form, the failure or deficiency will be called to the attention of such person either formally or informally as the circumstances appear to warrant.

§ 158.2 Response to notification.

If, as the result of such formal or informal notice, the matter is not adjusted within the time fixed by said notice, or within a reasonable time in case no date is specified, or if there is a disagreement between such person and the Commission or its representative respecting the application or interpretation of the Act or requirements of the Commission with respect to the matter at issue, such person will be requested to advise the Commission in writing within a time to be specified whether it consents to the disposition of the questions involved under the shortened procedure hereinafter provided.

§ 158.3 Facts and argument.

If the person consents to the matter being handled under such shortened procedure, the person and any other parties interested, including representatives of the Commission, shall submit to the Commission, within 30 days after the receipt of notice from the Commission to do so, a memorandum of the facts and, separately stated, of the argument relied upon, to sustain the position taken respecting the matter at issue together with copies in sufficient number to enable the Commission to retain three copies for its own use and make service in accordance with § 385.2010 of this chapter upon all parties designated in said notice. Twenty days will be allowed in which to file a reply by any party who filed an original memorandum.

[Order 141, 12 FR 8603, Dec. 19, 1947, as amended by Order 225, 47 FR 19057, May 3, 1982]

§ 158.4 Form and style.

Each memoranda must be complete in itself. All pertinent data should be

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set forth fully, and each memorandum should set out the facts and argument as prescribed for briefs in § 385.706 of this chapter.

[Order 141, 12 FR 8603, Dec. 19, 1947, as amended by Order 225, 47 FR 19057, May 3, 1982]

§ 158.5 Verification.

The facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses if hearing were had to testify as to the facts stated in the memorandum.

§ 158.6 Determination.

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

§ 158.7 Assignment for oral hearing.

In case consent to the shortened procedure is not given, or if at any stage of the proceeding prior to the submission of the case to the Commission any party in interest requests a hearing, the proceeding will be assigned for hearing as provided for by subpart E of part 385 of this chapter. The Commission may also in its discretion set the proceeding for hearing on its own motion at any stage thereof.

[Order 141, 12 FR 8603, Dec. 19, 1947, as amended by Order 225, 47 FR 19057, May 3, 1982]

§ 158.8 Burden of proof.

The burden of proof to justify every accounting entry shall be on the person making, authorizing, or requiring such entry.

CERTIFICATION OF COMPLIANCE WITH ACCOUNTING REGULATIONS

§ 158.10 Examination of accounts.

All natural gas companies not classified as Class C or Class D prior to January 1, 1984 shall secure for each year, the services of an independent certified public accountant, or independent licensed public accountant (licensed on or before December 31, 1970), certified

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or licensed by a regulatory authority of a State or other political subdivision of the United States, to test compliance in all material respects of those schedules that are indicated in the General Instructions set out in the applicable Annual Report, Form No. 2 or Form No. 2-A, with the Commission's Uniform System of Accounts and published accounting releases. The Commission expects that identification of questionable matters by the independent accountant will facilitate their early resolution and that the independent accountant will seek advisory rulings by the Commission on such items. This examination shall be deemed supplementary to periodic Commission examinations of compliance.

[Order 581, 60 FR 53065, Oct. 11, 1995]

§ 158.11 Report of certification.

Each natural gas company not classified as Class C or Class D prior to January 1, 1984 shall file with the Commission a letter or report of the independent accountant certifying approval, together with the original and each copy of the filing of the applicable Annual Report, Form No. 2 or Form No. 2-A, covering the subjects and in the format prescribed in the General Instructions of the applicable Annual Report. The letter or report shall also set forth which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission shall not be bound by the certification of compliance made by an independent accountant pursuant to this paragraph.

[Order 581, 60 FR 53065, Oct. 11, 1995]

§ 158.12 Qualifications of accountants.

The Commission will recognize only independent certified public accountants, or independent licensed public accountants who were licensed on or before December 31, 1970, who are in fact independent. For example, an accountant will not be considered independent with respect to any person or any of its parents or subsidiaries in who he has, or had during the period of report, any direct financial interest. The Commission will determine the fact of inde-

pendence by considering all the relevant circumstances including evidence bearing on the relationships between the accountant and that person or any affiliate thereof.

(Sec. 10, 52 Stat. 826; 15 U.S.C. 717i)

[37 FR 26006, Dec. 7, 1972, as amended at 60 FR 53065, Oct. 11, 1995]

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

Sec.

161.1 Applicability.

161.2 Definitions.

161.3 Standards of conduct.

AUTHORITY: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

§ 161.1 Applicability.

This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157, and subparts B or G of part 284 and is affiliated in any way with a natural gas marketing or brokering entity and conducts transportation transactions with its marketing or brokering affiliate. The requirements of this part also apply to pipeline sales operating units to the extent provided in § 284.286 of this chapter.

[Order 566-A, 59 FR 52904, Oct. 20, 1994]

§ 161.2 Definitions.

(a) *Affiliate*, when used in reference to any person in this part and § 250.16 of this chapter means another person which controls, is controlled by, or is under common control with, such person.

(b) *Control* (including the terms "controlling," "controlled by," and "under common control with") as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(c) *Marketing or brokering* as used in this part and § 250.16 of this chapter